))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8568 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHEMICALS LTD

Versus

UNION OF INDIA

Appearance:

MR SB VAKIL for Petitioner

MR AKSHAY H MEHTA for Respondent No. 1

MR HM BHAGAT instructed by Mr. RC Kodekar, AGP for Respondents No. 2 to 6 State.

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 04/08/2000

ORAL JUDGEMENT

By means of filing this petition under Articles

226 & 227 of the Constitution, the petitioner has prayed to issue a writ of mandamus or a writ of certiorari or any other appropriate writ, order or direction to quash and set aside Final Order No. 561/88, dt. September 23, 1988 in Revision Case No. 2/6/46/87/MV of the Government of India, Ministry of Steel and Mines, Department of Mines, New Delhi, by which revision application filed by the petitioner is being rejected as time barred. The petitioner has also prayed to command the Central Government to dispose of revision application filed by the petitioner on June 19, 1987 in accordance with law.

2. The petitioner is a Company incorporated under the provisions of the Companies Act, 1956. It manufactures Soda-ash and other heavy chemicals from lime-stones. The petitioner was granted mining lease over an area admeasuring 12.27 Hectares of village Aniali of Ranavav Taluka, District : Junagadh with effect from December 23, 1966. The lease was to expire on December 23, 1986. In the lease deed, it is provided that the lease can be renewed for the period specified therein at the petitioner's option. The petitioner submitted an application dated September 2, 1985 to the Government of Gujarat for renewal of lease under Rule 28(1) of the Mineral Concession Rules, 1960 ("the Rules" for short). The application submitted by the petitioner was received by the State Government on September 9, 1985. Under Rule 24(2) of the Rules, which was then in force, the State Government was required to dispose of the application within a period of six months from the date of its receipt. The explanation appended to Rule 54 of the Rules provides that if an application for renewal of lease is not disposed of within the period specified in respect thereof in the relevant rule, the State Government shall be deemed to have made an order refusing renewal of lease on the date on which such period expires. On July 10, 1987, the petitioner received a communication dated July 1, 1987 from the State Government mentioning, inter-alia, that as it had not been possible for the State Government to dispose of the petitioner's application dated September 9, 1985 within the period of twelve months as prescribed in Rule 24(1) of the Rules, an order refusing renewal of lease was deemed to have been made and that if the petitioner was interested in getting renewal of lease applied for,the petitioner should file revision application before the Central Government according to the Rules. The communication received by the petitioner from the State Government is produced at Annexure-B to the petition. On receipt of the communication, the petitioner applied to the Central Government on July 17, 1987 for revision of

deemed order of refusal to renew the lease passed by the State Government as provided by sub-rule (1) of Rule 54 of the Rules. From the order which is impugned in the petition, it is evident that the Central Government was of the opinion that revision application filed by the petitioner was time barred and, therefore, asked the petitioner to explain the delay by filing an affidavit vide letter dated May 23, 1988. Accordingly, the petitioner filed an affidavit on June 14, 1988, but maintained that the revision application dated July 17, 1987 was within the time limit of three months prescribed by Rule 54(1) of the Rules, as communication dated May 14, 1987 was received on May 21, 1987.

3. The Central Government did not accept the contention that the revision application was filed within the time prescribed by Rule 54(1) of the Rules. According to the Central Government, as per the provisions of Rule 24(1), which was in force at the relevant time, renewal application was required to be disposed of by the State Government within a period of six months which expired on March 9, 1986. The Central Government decided that since the State Government did not pass any order on the renewal application on the date on which the period expired, it was deemed to have passed an order on March 9, 1986 refusing renewal in terms of explanation appended to Rule 54 of the Rules and, therefore, the period of limitation would begin from March 9, 1986 i.e. the date on which the State Government refused renewal and not from the date of communication of the said order. The Central Government further held that the petitioner had failed to explain the delay caused in filing the revision application. In view of the above-referred to conclusions, the Central Government by the impugned order rejected the revision application filed by the petitioner as time barred, giving rise to present petition.

4. Mr. S.B.Vakil, learned Senior Counsel for the petitioner contended that the revision application which was filed on July 17, 1987 was within the period of three months as specified in sub-rule (1) of Rule 54 of the Rules because it was only on July 10, 1987 that the petitioner had received communication dated July 1, 1987 from the State Government to the effect that the State Government was deemed to have made an order refusing renewal application. According to the learned Counsel, relevant words in Rule 54(1) are; "within three months of the date of communicatioin of the order to him", and as the deemed order refusing renewal of lease is capable of being communicated, revision application filed by the

petitioner ought to have been treated as having been filed within the period of limitation. Without prejudice to the above referred to contention, it was submitted that the communication dated July 1, 1987 from the State Government itself furnished sufficient cause for condonation of delay, as the petitioner was informed that if it was interested in renewal of lease, the petitioner should file a revision application before the Central Government and, therefore, in any view of the matter, delay caused in filing revision application ought to have been condoned in view of proviso to Rule 54(1) of the Rules. The learned counsel further submitted that as there are no special reasons for not condoning the delay, petition should be allowed and the Central Government should be directed to decide the revision application on merits and in accordance with law. In support of his submissions, learned counsel placed reliance on the decision of Supreme Court rendered in M/s. Harkaran Das Mangilal and another v. Union of India and others, AIR 1981 SC 1734.

5. Mr. Akshay Mehta, learned Senior Standing Counsel for the Central Government pleaded that where the State Government fails to dispose of an application for grant of renewal of a mining lease within the period specified in respect thereof in the relevant Rule, the State Government is deemed to have made an order refusing renewal of lease and as the State Government failed to dispose of the application submitted by the petitioner before March 9, 1986, the revision application which was filed on July 17, 1987 was clearly time barred. What was claimed was that deemed order refusing renewal of lease is not required to be communicated to the applicant and, therefore, though the petitioner had filed revision application within three months from the date of receipt of communication from the State Government, it was rightly treated as time barred. In the alternative, it was maintained that no sufficient cause was made out for condoning delay caused in filing revision application and, therefore, the petition should be dismissed. Mr. H.M.Bhagat, learnd counsel for the State Government adopted arguments of Mr. Mehta and emphasised that the revision application was barred by period of limitation and as delay was not sufficiently explained, the order impugned in the petition should be sustained.

6. I have considered the submissions advanced at the Bar as well as documents forming part of the petition. In order to appreciate the controversy raised in the petition, it would be necessary to refer to provisions of revision as contained in Rule 54 of the Mineral

Concession Rules, 1960. Rule 54 of the Rules reads as under :

"54. Application for revision - (1) Any person aggrieved by any order made by the State Government or the authority in exercise of the powers conferred on it by the Act or these rules may, within three months of the date of communication of the order to him, apply to the Central Government in triplicate in Form No. for revisioin of the order. The application should be accompanied by a treasury receipt showing that a fee of Rs.500 has been paid into a Government treasury or in any branch of the State Bank of India doing the treasury business to the credit of Central Government under Head of account "128 Mines and Minerals, Mines Department, Minerals Concession Fees and Royalty".

Provision that any such application may be entertained after the said period of three months, if the applicant satisfies the Central Government that he had sufficient cause for making the application within time.

(1-A): Where the fee under sub-rule (1) has been deposited but no application for revision has been made, the fee shall be refunded to the person concerned on an application being made by him in this behalf to the Central Government.

(2) In every application under sub-rule (1) against the order of a State Government refusing to grant a prospecting licence or a mining lease, any person to whom a prospecting licence or a mining lease was granted in respect of the same area or for a part thereof, shall be impleaded as a party.

(3) Along with the application under sub-rule (1), the applicant shall submit as many copies thereof, as there are parties impleaded under sub-rule (2).

(4) On receipt of the application and copies thereof, the Central Government shall send a copy of the application to each of the parties impleaded under sub-rule (2) specifying a date on or before which he may make his representation, if any against the revision application.

Explanation : For the purposes of this rule, where a State Government has failed to dispose of an application for the grant or renewal of a prospecting licence or a mining lease within the period specified in respect thereof in these rules, the State Government shall be deemed to have made an order refusing the grant or renewal of such licence or lease on the date on which such period expires."

A bare reading of the above quoted provisions makes it manifest that any person aggrieved by any order made by the State Government or authority in exercise of powers conferred on it by the Act or the Rules, can apply to the Central Government for revising the order within three months of the date of communication of the order. Therefore, a revision application can be filed against any order made by the State Government or Authority. The explanation appended to Rule-54 provides that where the State Government has failed to dispose of an application for renewal of a mining lease within the period specified in respect thereof in the Rule, the State Government shall be deemed to have made an order refusing renewal of lease on the date on which such period expires. A deemed order made by the State Government refusing renewal of lease is covered by the phrase, "any order made by the State Government or Authority" as appearing in sub-rule (1) of Rule 54 of the Rules and is revisable. It is nobody's case that deemed order refusing renewal of lease is not capable of being communicated to the affected person. As noted earlier, in the facts of the case, it was so communicated to the petitioner. By no logic or rule of interpretation, it is possible to hold that deemed order refusing renewal of lease, is not capable of being communicated to an affected person. Therefore, it is not correct to say that deemed order refusing renewal of lease must be challenged within six months from the date on which the period specified in respect of disposal of the application expires. It is true that since the State Government did not pass any order on the application submitted by the petitioner for renewal of lease, the State Government must be deemed to have made an order refusing renewal of lease. However, the requirement of the rule is that the revision application must be filed by the aggrieved person within three months from the date of communication of the order to him and not within three months from the date on which either actual or deemed order is said to have been made. Under the circumstances, I am of the opinion that the revision

application which was filed by the petitioner on July 17, 1987 after receipt of communication dated July 1, 1987 from the State Government, was within the period of limitation and the Central Government was not justified in rejecting the same as time barred.

Even otherwise, I am of the view that the Central Government was not justified in rejecting the revision application as time barred because the communication dated July 1, 1987 itself furnished sufficient cause for condonation of delay. In communication dated May 14, 1987, it was specifically informed by the State Government that if the petitioner was interested in getting renewal of lease, the petitioner should file a revision application to the Central Government as required by the Mineral Concession Rules, 1960. In the alternative, the petitioner was also advised to approach the Collector of Junagadh for refund of fee if paid by it. In M/s. Harkaran Das Mangilal (supra), the Supreme Court while considering the provisions of Mines and Mineral (Regulation and Development) Act, 1957, has held that revision in renewal cases should not be rejected on the ground of delay, unless special reasons for not condoning delay exist. In that case, mining lease in respect of china clay was granted to the appellants. The Central Government by its Final Order had set aside the order of the State Government passed in favour of the appellants and directed that the State Government need not pass any fresh orders on the renewal application of the appellants, since it was deemed to have been rejected on December 23, 1975 and since the appellants had not filed a revision application against the deemed rejection within the prescribed period of limitation. After noticing that the Central Government has powers to condone delay caused in filing revision, what is emphasised by the Supreme Court is that unless there are special reasons, delay should be condoned. Again, in case of SHRI NAND LAL JAIN v. STATE OF BIHAR, (1980) 3 SCC 317, it is ruled by the Supreme Court that in absence of special reasons, application for condonation of delay should not be rejected.

As observed earlier, on the basis of communication received from the State Government, the petitioner was justified in invoking revisional jurisdiction of the Central Government. The communication dated July 1, 1987 itself furnished sufficient cause to the petitioner for claiming relief of condonation of delay caused in filing revision application. Therefore, in my view, Central Government was not justified in holding that the petitioner had

failed to explain the reasons of delay and, therefore, the revision application was liable to be rejected as time barred.

In view of the above discussion, the impugned order deserves to be set aside and the petition should succeed.

For the foregoing reasons, the petition succeeds. The order dated March 21, 1988 passed by the Central Government,which is produced at Annexure-A to the petition, is hereby set aside and quashed. The Central Government is directed to dispose of the petitioner's revision application dated July 17, 1987 on merits and in accordance with law as early as possible and without any avoidable delay. The revision application directed against deemed order of the State Government refusing renewal of lease, shall not be rejected on the ground of delay. Rule is made absolute accordingly, with no order as to costs. Ad-interim relief granted earlier is hereby vacated.

(J.M.Panchal, J.)

(patel)